

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 25, 2000

GSBCA 15391-RELO

In the Matter of ROBERT D. SHELDON

Robert D. Sheldon, Oviedo, FL, Claimant.

Judy Hughes, Travel Policy, Defense Finance and Accounting Service, Columbus Center, Columbus, OH, appearing for Department of Defense.

BORWICK, Board Judge.

Claimant, Robert D. Sheldon was employed by the Department of the Army's (agency's) Cold Regions Test Center (CRTC), Fort Greely, Alaska. The agency granted claimant a compassionate separation transfer to his residence in New Hampshire, but while claimant and his family were in Alaska, he secured a position with the Department of the Navy in Orlando, Florida. After claimant reported for duty in Orlando, Florida, he sold his house in Alaska and sought reimbursement of real estate transaction expenses incurred in that sale. The agency denied reimbursement because, under the provisions of the Joint Travel Regulations (JTR), as a separated employee claimant was not entitled to reimbursement of real estate transaction expenses. It also concluded that the Department of the Navy treated claimant as a local hire, not entitled to Permanent Change of Station reimbursement.

We sustain the agency's decision. Under the JTR an employee returned to his residence in the Continental United States (CONUS) from outside CONUS is not entitled to reimbursement of real estate transaction expenses. Additionally, under statute and the JTR, even if, as argued by claimant, the agency should have considered his travel as between the official stations of Fort Greely, Alaska, and Orlando, Florida, the Department of the Navy did not treat his hiring as in the interest of the Government so as to entitle claimant to reimbursement of real estate transaction expenses.

In this matter, claimant transferred from Hanover, New Hampshire to Fort Greely, Alaska in 1987, to serve with the agency's CRTC. Claimant and his spouse signed transportation agreements authorizing return rights to CONUS. In 1999, the town of Delta Junction near Fort Greely could no longer meet the needs of claimant's child, who had a serious medical condition. Claimant applied for compassionate reassignment to CONUS,

and the request was granted. Claimant, however, was unable to find a position with the agency and the agency granted him permission to return to his home of record in Hanover, New Hampshire, for separation.

On June 16, 1999, the agency issued a separation travel authorization which stated that "employee is exercising return rights to CONUS for employment in another agency without a break in service after separation." In the "remarks" section, the authorization mentioned, among other entitlements, "real estate expenses for sale of home at old Permanent Duty Station." The authorization also had checked Box 11 of the form, entitled "Real Estate Expenses."

Before claimant left Alaska, however, he secured a position with the Department of the Navy in Orlando, Florida. The record shows that the Department of the Navy considered claimant to be a "local hire" and did not intend to authorize reimbursement of PCS expenses.

Claimant and one of his children drove from Fort Greely, Alaska to Orlando, Florida in time for his duty reporting date of August 1.

On August 31, the agency issued an amended travel authorization stating that claimant's releasing official station was the CRTC, Fort Greely, Alaska; that claimant's actual residence for expenses was Hanover, New Hampshire; and that the new duty station was the Naval Air Warfare Center, Orlando, Florida. In the remarks section, the amended authorization did not explicitly grant claimant real estate expenses for the sale of his home at his old PDS; box 11 of the order, entitled "Real Estate Expenses," was checked, however. The agency issued the amended orders after claimant reported for duty to accommodate the delayed travel of claimant's spouse and second child.

Claimant sold his house on September 24 and incurred \$6616 of real estate transaction expenses. Claimant sought reimbursement for those expenses, which the agency denied because, from the viewpoint of the losing agency, he was a separated employee not authorized to incur real estate transaction expenses under the JTR. The agency considers the travel authorization of June 16, 1999, to be erroneous to the extent that it authorized reimbursement of real estate transaction expenses. From the viewpoint of the gaining agency, claimant was a local hire also ineligible for reimbursement of real estate transaction expenses.

Claimant argues that the agency erred "in issuing separation travel orders instead of PCS travel orders. By reviewing the travel orders, it is obvious that CRTC believes that I should be reimbursed expenses for the sale of my residence."

Claimant has not demonstrated grounds for entitlement under statute or regulation. The separation travel orders issued by the agency represented the agency's intent to return claimant to his residence in Hanover, New Hampshire. Employees returned to CONUS for separation are not entitled to reimbursement of real estate transaction expenses. JTR C14001-4. That claimant was still at Fort Greely, Alaska, when the Department of the Navy hired him for duty in Orlando, Florida, is a coincidence that does not grant claimant rights to real estate transaction expenses.

Furthermore, whether claimant had moved to Orlando, Florida, from Delta Junction, Alaska, or Hanover, New Hampshire, the Department of the Navy never intended to pay claimant's PCS expenses, as it did not consider claimant's filling the position by moving from one duty station to another to be in the best interest of the Government. Rather, the Department of the Navy treated claimant as a "local hire." Under applicable statute and the JTR, PCS expenses are payable when it is in the interest of the Government to fill a position by moving a current employee from one duty station to another. When a transfer is made primarily for the benefit of an employee or at the employee's request, PCS expenses are not payable. 5 U.S.C. §§ 5724(a), 5724a(a), 5724(h) (1994 & Supp. IV 1998); JTR C4100-A.1; see Linda L. Shaw, GSBCA 14977-RELO, 99-2 BCA ¶ 30,494. The agency's error in authorizing reimbursement of claimant's real estate transaction expenses in the travel authorizations of June 16 and August 31 does not enlarge claimant's entitlements. See Louis David Carter, GSBCA 15381-RELO (Sept. 28, 2000).

The agency correctly applied statute and the JTR in denying the claim.

ANTHONY S. BORWICK
Board Judge